HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1786 of 2002 (SB)

Salek Chand …… Petitioner

Versus

State of Uttaranchal and others ……. Respondents

Sri R.D. Khare, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 6.4.2004

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of certiorari quashing the order dated 25.6.2002 passed by the respondent no.3 and the orders dated 2.7.2002 and 16.7.2002 passed by the respondent no.4 annexure 11,12, and 13 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that petitioner is posted as Sub Inspector in P.S. Kotwali, Hardwar. He is permanent resident of District Meerut, State of U.P. and he has given his option for the State of U.P. The petitioner has further stated that he is suffering from cervical spondylitis and is

under treatment. The petitioner was transferred from Haridwar to Rudra Prayag vide order dated 19.11.2001. The petitioner has submitted that he has made a representation before respondent no.2 on 20.11.2001 and prayed for cancellation of his transfer order on the ground of illness. The respondent no.2 after considering the representation of the petitioner has stayed his transfer order dated 19.1.2001. While the petitioner was undergoing treatment the respondent no.3 passed order on 25.6.2002 directing the petitioner to resume his duty at Rudraprayag.

A Division Bench of this Court has passed the following order on 14.12.2002:

"In the mean time the decision with regard to the relieving of the petitioner to U.P. will be taken within a month from the date of production of certified copy of this order."

The counsel for the petitioner has stated that despite of the order of the Court, representation of the petitioner with regard to his option to Uttar Pradesh has not been decided by the Advisory Committee. The petitioner is suffering from various ailments and he is unable to go to Rudraprayag.

So far as the medical ailment and transfer order is concerned the petitioner is at liberty to make representation afresh to the authority concerned, who shall decide the same within one month.

So far as the option for state of U.P. is concerned Section 73 of the Uttar Pradesh Reorganization Act, 2000 provides that every person shall continue to serve provisionally and thereafter the Central Government shall determine the final allocation for service. Section 73 (1), (2), (3) reads as under: -

"Provisions relating to other services. – (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this Sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor state, shall, if he is not already serving therein be made available for serving in the successor state from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

The advisory committee has been constituted under Uttar Pradesh Reorganization act 2000 by virtue of section 76 of the act. It reads as under:-

"Advisory Committees.- The Central Government may by order, establish one or more Advisory Committees for the purpose of assisting it in regard to –

(a) the discharge of any of its function under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representation made by such persons.

However, liberty is given to the petitioner to make representation to the Advisory Committee, who shall decide the same within one month after hearing the petitioner in accordance with Section 76 (a) of the Act.

So far as the salary of the petitioner is concerned, the petitioner shall be entitled to get his salary and the same shall be paid to him forthwith.

The writ petition is disposed of accordingly. No order as to costs.

Rajesh Tandon

6.4.2004
Dhyani